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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 460

Introduced by Assembly Member Ackerman

February 16, 1999

An act to add Section 53216.8 to the Government Code, and to amend Sections 16060.5, 16061.5, 16061.7, and 16061.8 of, and to add Section 16061.9 to, the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 460, as amended, Ackerman. Trusts: trustees and other fiduciaries.

(1) Existing law authorizes the legislative body of a local agency to establish a pension trust, as specified.

This bill would, in cases where the pension trust permits a participant or beneficiary to direct investments in his or her account, provide that a *corporate* custodian, *or a corporate*

trustee, ~~or a fiduciary, or a person who~~ *that* otherwise provides services to the trust shall not be liable for any loss, or for any breach, which results from the participant's or beneficiary's directions with respect to the assets in his or her account.

(2) Existing law defines the phrase "terms of the trust" for purposes of laws regarding the duty of a trustee to keep the beneficiaries of a trust reasonably informed of the trust and its administration to include the written trust instrument of an irrevocable trust or those provisions of a written trust instrument that describe or affect an irrevocable portion of a trust.

This bill would revise the definition to state that it means the written trust instrument of an irrevocable trust instrument in effect at the settlor's death that describes or affects that portion of a trust that has become irrevocable at the settlor's death. It also would provide that the phrase includes documents *irrevocably* exercising a power of appointment, as specified, but does not include superseded trust instruments or amendments.

(3) Existing law requires, when a revocable trust or any portion thereof becomes irrevocable for any reason, that the trustee shall provide a copy of the trust or irrevocable portion of it, as specified.

This bill would require the trustee to provide the copy, as specified, when the trust becomes irrevocable or a portion of the trust becomes irrevocable because of the death of one or more of the settlors. This bill would also require that the trustee provide the copy, as specified, when the terms of the trust expressly provide that the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more settlors of the trust.

(4) Existing law requires a trustee to provide specified information regarding the trust and the trustee to each beneficiary of an irrevocable trust or irrevocable portion of a trust, to each heir of the settlor, and to the Attorney General, as specified.

Existing law also provides that a trustee who fails to make a good faith effort to serve the notification by the trustee shall



be responsible for all damages including attorneys' fees and costs resulting from the failure.

This bill would revise and recast these provisions to, among other things, require that trustees provide specified information to certain beneficiaries and heirs when the terms of the trust expressly provide that the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more settlors of the trust. The bill would further provide that a trustee who fails to give notification, as specified, to a beneficiary shall be responsible for all damages, *attorney's fees, and costs* caused by the failure unless the trustee has made a ~~reasonable and~~ *reasonably* diligent effort to comply with the notification requirements. This bill would also provide that a trustee who fails to give notification, as specified, to an heir who is not a beneficiary and who is known to the trustee shall be responsible for all damages, ~~attorney's fees, and costs~~ caused to the heir by the failure unless the trustee has made a ~~reasonable and~~ *reasonably* diligent effort, as defined, to comply with notification requirements. The bill would further provide that a trustee may consider the fact that the period within which a beneficiary may contest a trust has not expired when exercising discretion in distributing assets.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53216.8 is added to the
2 Government Code, to read:
3 53216.8. In the case of a pension trust established
4 pursuant to this article which provides for individual
5 accounts and permits a participant or beneficiary to
6 direct investments in his or her account, if a participant
7 or beneficiary directs investments in his or her account,
8 no person who is a ~~custodian, trustee, or a fiduciary, or~~
9 ~~otherwise corporate custodian or a corporate trustee that~~
10 provides services to the pension trust shall be liable for
11 any loss, or by reason of any breach, which results from

1 that participant's or beneficiary's directions with respect
2 to the assets in his or her account.

3 SEC. 2. Section 16060.5 of the Probate Code is
4 amended to read:

5 16060.5. As used in this article, "terms of the trust"
6 means the written trust instrument of an irrevocable trust
7 or those provisions of a written trust instrument in effect
8 at the settlor's death that describe or affect that portion
9 of a trust that has become irrevocable at the death of the
10 settlor. In addition, "terms of the trust" includes, but is
11 not limited to, signatures, amendments, disclaimers, and
12 any directions or instructions to the trustee that affect the
13 disposition of the trust. "Terms of the trust" does not
14 include documents which were intended to affect
15 disposition only while the trust was revocable. If a trust
16 has been completely restated, "terms of the trust" does
17 not include trust instruments or amendments which are
18 superseded by the last restatement before the settlor's
19 death, but it does include amendments executed after the
20 restatement. "Terms of the trust" also includes any
21 document *irrevocably* exercising a power of
22 appointment over the trust or over any portion of the
23 trust which has become irrevocable.

24 SEC. 3. Section 16061.5 of the Probate Code is
25 amended to read:

26 16061.5. (a) When a revocable trust or any portion of
27 a revocable trust becomes irrevocable because of the
28 death of one or more of the settlors of the trust, or
29 because, by the express terms of the trust, the trust
30 becomes irrevocable within one year of the death of a
31 settlor because of a contingency related to the death of
32 one or more of the settlors of the trust, the trustee shall
33 provide a true and complete copy of the terms of the
34 irrevocable trust, or irrevocable portion of the trust, to
35 any beneficiary of the trust who requests it and to any heir
36 of a deceased settlor who requests it.

37 (b) The trustee shall, for purposes of this section, rely
38 upon any final judicial determination of heirship.
39 However, the trustee shall have discretion to make a good
40 faith determination by any reasonable means of the heirs



1 of a deceased settlor in the absence of a final judicial
2 determination of heirship known to the trustee.

3 SEC. 4. Section 16061.7 of the Probate Code is
4 amended to read:

5 16061.7. (a) A trustee shall serve a notification by the
6 trustee as described in this section in the following events:

7 (1) When a revocable trust or any portion thereof
8 becomes irrevocable because of the death of one or more
9 of the settlors of the trust, or because, by the express terms
10 of the trust, the trust becomes irrevocable within one year
11 of the death of a settlor because of a contingency related
12 to the death of one or more of the settlors of the trust.

13 (2) Whenever there is a change of trustee of an
14 irrevocable trust. The duty to serve the notification by the
15 trustee is the duty of the continuing or successor trustee,
16 and any one cotrustee may serve the notification.

17 (b) The notification by the trustee required by
18 subdivision (a) shall be served on each of the following:

19 (1) Each beneficiary of the irrevocable trust or
20 irrevocable portion of the trust, subject to the limitations
21 of Section 15804.

22 (2) Each heir of the deceased settlor, if the event that
23 requires notification is the death of a settlor or
24 irrevocability within one year of the death of the settlor
25 of the trust by the express terms of the trust because of a
26 contingency related to the death of a settlor.

27 (3) If the trust is a charitable trust subject to the
28 supervision of the Attorney General, to the Attorney
29 General.

30 (c) A trustee shall, for purposes of this section, rely
31 upon any final judicial determination of heirship, known
32 to the trustee, but the trustee shall have discretion to
33 make a good faith determination by any reasonable
34 means of the heirs of a deceased settlor in the absence of
35 a final judicial determination of heirship known to the
36 trustee.

37 (d) The trustee need not provide a copy of the
38 notification by trustee to any beneficiary or heir (1)
39 known to the trustee but who cannot be located by the

1 trustee after reasonable diligence or (2) unknown to the
2 trustee.

3 (e) The notification by trustee shall be served by mail
4 to the last known address, pursuant to Section 1215, or by
5 personal delivery.

6 (f) The notification by trustee shall be served not later
7 than 60 days following the occurrence of the event
8 requiring service of the notification by trustee, or 60 days
9 after the trustee became aware of the existence of a
10 person entitled to receive notification by trustee, if that
11 person was not known to the trustee on the occurrence
12 of the event requiring service of the notification. If there
13 is a vacancy in the office of the trustee on the date of the
14 occurrence of the event requiring service of the
15 notification by trustee, or if that event causes a vacancy,
16 then the 60-day period for service of the notification by
17 trustee commences on the date the new trustee
18 commences to serve as trustee.

19 (g) The notification by trustee shall contain the
20 following information:

21 (1) The identity of the settlor or settlors of the trust
22 and the date of execution of the trust instrument.

23 (2) The name, mailing address and telephone number
24 of each trustee of the trust.

25 (3) The address of the physical location where the
26 principal place of administration of the trust is located,
27 pursuant to Section 17002.

28 (4) Any additional information that may be expressly
29 required by the terms of the trust instrument.

30 (5) A notification that the recipient is entitled, upon
31 reasonable request to the trustee, to receive from the
32 trustee a true and complete copy of the terms of the trust.

33 (h) If the notification by the trustee is served because
34 a revocable trust or any portion of it has become
35 irrevocable because of the death of one or more settlors
36 of the trust, or because, by the express terms of the trust,
37 the trust becomes irrevocable within one year of the
38 death of a settlor because of a contingency related to the
39 death of one or more of the settlors of the trust, the
40 notification by the trustee shall also include a warning, set

1 out in a separate paragraph in not less than 10-point
2 boldface type, or a reasonable equivalent thereof, that
3 states as follows:

4 “You may not bring an action to contest the trust more
5 than 120 days from the date this notification by the trustee
6 is served upon you or 60 days from the date on which a
7 copy of the terms of the trust is mailed or personally
8 delivered to you ~~in response to your request during that~~
9 ~~120-day period~~, whichever is later.”

10 (i) Any waiver by a settlor of the requirement of
11 serving the notification by trustee required by this section
12 is against public policy and shall be void.

13 (j) A trustee may serve a notification by trustee in the
14 form required by this section on any person in addition to
15 those on whom the notification by trustee is required to
16 be served. A trustee is not liable to any person for serving
17 or for not serving the notice on any person in addition to
18 those on whom the notice is required to be served. A
19 trustee is not required to serve a notification by trustee
20 if the event that otherwise requires service of the
21 notification by trustee occurs before January 1, 1998.

22 SEC. 5. Section 16061.8 of the Probate Code is
23 amended to read:

24 16061.8. No person upon whom the notification by the
25 trustee is served pursuant to this chapter may bring an
26 action to contest the trust more than 120 days from the
27 date the notification by the trustee is served upon him or
28 her, or 60 days from the day on which a copy of the terms
29 of the trust is mailed or personally delivered to him or her
30 ~~in response to his or her request during that 120-day~~
31 ~~period~~, whichever is later.

32 SEC. 6. Section 16061.9 is added to the Probate Code,
33 to read:

34 16061.9. (a) A trustee who fails to serve the
35 notification by trustee as required by Section 16061.7 on
36 a beneficiary shall be responsible for all damages,
37 attorney’s fees, and costs caused by the failure unless the
38 trustee makes a ~~reasonable~~ and reasonably diligent effort
39 to comply with that section.

1 (b) A trustee who fails to serve the notification by
2 trustee as required by Section 16061.7 on an heir who is
3 not a beneficiary and whose identity is known to the
4 trustee shall be responsible for all damages caused to the
5 heir by the failure unless the trustee shows that the
6 trustee made a ~~reasonable~~ and *reasonably* diligent effort
7 to comply with that section. For purposes of this
8 subdivision, ~~“reasonable”~~ and *“reasonably”* diligent effort”
9 means that the trustee has sent notice by first class mail
10 to the heir at the heir’s last mailing address actually
11 known to the trustee.

12 (c) A trustee, in exercising discretion with respect to
13 the timing and nature of distributions of trust assets, may
14 consider the fact that the period in which a beneficiary or
15 heir could bring an action to contest the trust has not
16 expired.

